burden the parties with hundreds and hundreds of interrogatories directed to the claim construction.

So what Mr. Shore is proposing here is really going to be extremely burdensome, it's really not going to move the case forward, it's going to cost a lot of money, and I think that there's just a much more efficient way to do it. And there's been no good argument made here today why the local rules should be disregarded, which is what he's asking the court to do. He's asking the court to set aside the local rule with respect to interrogatories and adopt a completely different procedure to just allow them to serve as many interrogatories, you know, up to this 900 limit as they want, without putting them forth in advance, without meeting and conferring us, and it's really just going to be a very burdensome process, Your Honor.

THE COURT: Well, let's assume that they file with you, and tomorrow all the interrogatories that they want to ask the court to approve, what happens then?

MR. MURRAY: Well, I think that that would be a good first step for them, because that would be in accordance with the local rules, and we would sit down and try to negotiate with them and work something out. If the interrogatories are reasonable and we think will

move discovery forward in this case, perhaps we would agree to them. If we think they're not and then --

THE COURT: The interrogatories that they file today, you said you've looked at it briefly; are these reasonable as far as the defendant is concerned?

MR. MURRAY: I think some of them are clearly not reasonable. But I would, you know, I would request time to study them and discuss them with my client and find out what, what the burden would be on us to respond to them. I think a lot of these -- a lot of the information they're looking for here can and should be obtained through means less burdensome than interrogatories, like documents. I think they should wait and get the documents that they've asked for and see whether they still need this information after getting the documents. They want to know -- well, some of them ask us to identify documents, identify documents concerning --

THE COURT: But the documents won't be received by them until sometime in April, I think. I think the stipulation calls for providing these documents in April.

MR. MURRAY: Well, the parties have agreed and stipulated to sort of staged discovery here, where we're going to focus first on the jurisdictional

discovery, which is what the parties really need to focus on going into the hearing on the motion to dismiss. So they're getting the documents for the jurisdictional discovery --

THE COURT: In April.

MR. MURRAY: No, now. In fact, the April cut-off I think is the end of document discovery, not the beginning of it. We're going to be producing documents, if not today -- I was just in touch with my office before I came in here to find out the status of that. I have five lawyers screening documents all week trying to get them produced, and we'll certainly be starting to produce documents next week.

So they will not have to wait long to start getting that information, and they can evaluate that information, and then see what they need reasonably after that, and they can sit down and say, well, we want to serve these 50 interrogatories directed to, you know, whether or not Fujitsu owns the patents. And I'll say to them, well, look at these documents, here are all the assignments, here are all the documents relating to ownership, you have all that information, you don't need an interrogatory.

Similarly, the proposed interrogatories on the construction of the claims, we're going through the

process in California right now where I'm about to give them our preliminary infringement contentions. The preliminary infringement contentions go through all of the claims that we're asserting and explain exactly how they infringe, and we give them claim charts --

THE COURT: Those relate only to the seven claims that are at issue here?

MR. MURRAY: Right. Well, we're doing that for the --

THE COURT: For the seven claims?

MR. MURRAY: Well, for the four. There are four patents that we have asserted in California.

THE COURT: Because there's three that you say you're not infringing.

MR. MURRAY: Right.

THE COURT: There are seven in total number.

MR. MURRAY: That's correct, Your Honor. So they'll give us preliminary infringement contentions for their three patents, we give them for our four, and when we get to that stage in this case when we answer and we see what patents are in this case, we would do the same thing. That's a very efficient way of moving the ball forward on the infringement issues.

THE COURT: But that leaves eight patents, though, that are made an issue here, that's presumably

not being exchanged there, in terms of infrangibility, claims of infringement.

MR. MURRAY: Yes, but those, they're not yet in California because it's really just isn't ripe yet. But they have now added the additional Fujitsu patents in their answer and counterclaims, they've asked for a declaratory judgment of non-infringement, et cetera, for those same patents. Not all the same patents are in both cases.

THE COURT: But they want discovery as to these eight other patents now. At least that's what they're seeking. At least.

MR. MURRAY: Right, and I'm suggesting that it's premature. It's premature in Guam to demand that discovery through interrogatories, certainly, or even through preliminary infringement contentions, because we have moved to dismiss for lack of jurisdiction. We don't believe that there is jurisdiction over the Fujitsu defendants, and we think that issue should be resolved first.

THE COURT: But, you know, assuming that the motion is denied, where does that leave the parties in terms of discovery effort that has completely stalled for months because we've awaited a decision on the motion?

MR. MURRAY: Well, the parties have stipulated in --

THE COURT: Other than what you stipulated to mutually.

MR. MURRAY: Well, yes. I think that the parties have agreed, Your Honor, and stipulated that we would first finish the jurisdictional discovery, because there's a lot to do, and we want to focus on what's important right now, which is the jurisdictional discovery. The parties have agreed that the merits based discovery would happen I think within 30 days of the hearing on the motions to dismiss, we begin answering merits based discovery, and at that time we could proceed with let's say preliminary infringement contentions, you know, if it's appropriate, you know, et cetera.

THE COURT: All right. So what they've asked here in terms of what the court has been presented to date, is that jurisdictionally based or merit based?

MR. MURRAY: That seems to be merit -- again, I haven't studied them, but it seems to be merits based discovery.

THE COURT: So you're saying based on your agreement with the other side, they're barred from asking the court to move forward with this request,

based on your agreement for advancing certain discovery?

MR. MURRAY: No, Your Honor, I'm not saying that. I'm saying that I think that, first of all, this is the wrong procedure for getting the information that they want; that the more appropriate procedure is what's happening -- like the procedure that's happening in the Northern District of California where the parties will give each other infringement contentions. It's really the same information. Mr. Shore showed you those claims. We will have a chart with those claims and how they infringe, we'll give them that information.

THE COURT: When is that going to take place?

MR. MURRAY: Well, the rules trigger the date for preliminary infringement contentions based on basically when the assertion is made. I mean, we haven't -- we have only asserted four patents against them as of today.

THE COURT: So when does that, when does the exchange take place as to those four patents?

MR. MURRAY: Oh. I'm sorry, I don't know off hand. But it's very soon, it's within I think a week or so.

THE COURT: A week from today?

MR. MURRAY: I believe it's -- well, I'm sorry, I don't know that date off hand because it's -- it's a due date in the Northern District of California case, but it's very soon, it's --

THE COURT: So presumably a week from today you give them your four claims and they'll give you their three at the same time.

MR. MURRAY: That's right.

THE COURT: So at least there's information as to seven of these 15 claims within a week.

MR. MURRAY: Right. And we will be giving them preliminary infringement contentions on all the patents that we have asserted. I mean, remember in the Guam case, we have not asserted those other Fujitsu patents against them. They've asked for declaratory judgment that those patents are invalid and not infringed. But until we actually assert those patents against them, then we do not have under the Northern District rules, and I would say that we shouldn't have an obligation to show infringement evidence.

If we decide to assert them and ask for damages, et cetera, for those patents, then we would of course agree to provide the same type of infringement contention information that we're providing very soon for the four patents that we have asserted. We've only

asserted four patents. And I say we, it's actually Fujitsu Limited, one of the defendants here, Fujitsu Limited has asserted four patents, and we're about to give them the preliminary infringement contentions on those four patents.

If we assert additional patents, some of the additional 11 that they've asked for declaratory relief, then of course we would provide them that same level of information at the appropriate time. And the timing gets triggered off of when we actually make the assertion, it's within a certain number of days of making the assertion, and we would give them those preliminary infringement contentions. But that system, Your Honor, really works very well, and it's been well established and developed in the Northern District for getting the right information to the parties, and doing it in a way that's not unduly burdensome, and it's exactly --

THE COURT: So that takes care of Counts 39 through 50, but you still have 38 other counts remaining, at least for that information.

MR. MURRAY: Right. But the -- similarly, their preliminary invalidity contentions that would be provided under the Northern District of California rules, where the parties give all of the invalidity

evidence that they have --

THE COURT: That would take care of another three counts here, Counts 3, 4 and 5.

MR. MURRAY: Right. Well, my point is, Your Honor, that it's kind of difficult to talk about the merits of particular interrogatories when we don't have them, and I think that's why the local rule is so good on this point. I mean, let's see the interrogatory that they want to serve, once they serve their 25, let's see interrogatory No. 26, and then we can talk about whether it's a reasonable interrogatory or not. And if they -- if we have some agreement, then we don't have to disturb the court and we'll just agree to answer it. If there is some disagreement, then at that time it would really be ripe. But it's very difficult in kind of a vacuum to talk about whether a particular hypothetical interrogatory about a particular count is reasonable or not, or whether that information really should be obtained through some other way, through documents or through deposition. And, you know, that's one of the reasons that we think that this motion is just premature and inappropriate.

If they followed the local rule procedure, we think that we can move this case forward and work with them, and have a meet and confer. I mean, they should

have given me these 25 interrogatories before five minutes before the hearing. Maybe we could have sat down and talked about them and worked something out. They didn't even try to do that. And that's been kind of the pattern of plaintiffs in the case is to file motions and then sort of, after the fact, maybe try to make an approach to us and try to resolve something. And I just think it's an unfortunate way to proceed, and it places an undue burden on the court, and it really doesn't move the ball forward.

THE COURT: Anything else?

MR. MURRAY: No, Your Honor. Thank you.

THE COURT: All right, thank you very much, Mr. Murray.

Mr. Shore? A couple of things I want to hear from your side. There have been arguments made to the court that perhaps the exchange that presumably is going to take place within a week's time might take care of some of the concerns that you have in terms of the interrogatories or other requests for admissions. So I just want perhaps your feeling on that.

MR. SHORE: I agree with him, Judge, that's a very efficient way to do that. And we have met and conferred with them about using the Northern District Local Rules as far as infringement contentions and

invalidity contentions, and we agree with that. But that, you know, if you listen --

THE COURT: Let's assume that you received these documents, though; would receipt of those documents in a sense change the manner in which your interrogatories are to be drafted or -- see, that's my concern.

MR. SHORE: (Overlapping/unintelligible.)

THE COURT: Go ahead, I'm sorry.

MR. SHORE: They will, Judge. Once we get the documents, we'll know what our interrogatories are going to be. We can't give you the interrogatories now, a sample interrogatory. We came up with a sample what we thought they would be, but we have to look at the documents. Generally you have documents, discovery of interrogatories, and you have depositions, and then you have requests for admissions to narrow the issues. Once we get the documents, we'll know what the interrogatories are going to be. Each step --

THE COURT: All right. The interrogatories you gave me this morning is one of those patent claims that's at issue in Northern California.

MR. SHORE: One of the patents. Those, what we're just asking for, Judge, is 25 interrogatories initially for each patent; that's not very many when

you think about that. You know, counsel a minute ago said that we're proposing that we give interrogatories to construe the claims for every word in the claims. You know, I would be asking you for 10,000 interrogatories if that's what I was intending to do. I mean, when we put those independent claims up here --

THE COURT: But wouldn't your time be better put if you get those documents, then look at them, and then perhaps your interrogatories might change in terms of what you would want after having received those documents?

MR. SHORE: They will change, Judge. We'll have a different set of interrogatories for each one of those patents, but to think that we wouldn't have --

THE COURT: So why would I approve something like this at this point, knowing that very well what you might be seeking here may change once you get those documents in a week's time?

MR. SHORE: What the interrogatories ask, but it won't change the number. I mean, each one of those patents is a complex case in and of itself.

THE COURT: But you say 25 here.

MR. SHORE: That's just for one patent. That's just for one patent.

THE COURT: Right. So the information -- so

you're saying to me that regardless of the information that you receive, you will still have 25 interrogatories per patent.

MR. SHORE: I could probably ask a hundred after what we receive. What he's talking about, he's saying that we will propose to do all our claims construction through interrogatories. We're not, we're not doing that.

THE COURT: But isn't it better attorney time on your part, though, as opposed to giving them 25 interrogatories today, get the information and then tailor your request so that it doesn't take into consideration information you've already received?

MR. SHORE: Exactly, Judge, that's why we thought there was good cause --

THE COURT: Isn't that what he's actually saying, that the request is a little premature at this time?

MR. SHORE: It's not premature, because -- I agree with you, Judge, that once we get this information, their initial infringement contentions, we're going to have 25 interrogatories, and we'll be able to tailor those interrogatories to the issues in the case because each step in this discovery process is going to narrow those claims.

So, yes, but that is our good cause for not following Local Rule 33.1. We don't know what those interrogatories are going to be, but I guarantee you we will have way more than 25 interrogatories we could ask for each patent. I mean, --

THE COURT: But would it be fair to say that you know what the 25 interrogatories would be as to those patents that are not at issue here -- not at issue there?

MR. SHORE: Those, Judge, those -- let me --

THE COURT: You didn't have any exchange of documents regarding those patents.

MR. SHORE: Those patents are at issue. They didn't call --

THE COURT: That's what I'm saying. Your initial request -- assuming I give you 25 per patent, your request for those patents not at issue there would be the same because you won't be getting any information regarding them in the exchange process.

MR. SHORE: Well, he was wrong, Judge. When he said that the Northern District doesn't require him to provide contentions for the patents that we raised on declaratory judgment, he's just flat wrong about that. It does. Those patents are at issue, every patent, all 18 patents are at issue in both cases.

You know --

THE COURT: So next week you'll be getting the same information regarding those other parents?

MR. SHORE: We're going to get information. We should get information on all of the patents. If they don't think those patents are really at issue, Judge, they should file a motion to dismiss for lack of jurisdiction, claiming there's not a, you know, a ripe claim or controversy regarding those patents. You know, they're not filing a motion to dismiss for lack of subject matter jurisdiction. There is a declaratory judgment jurisdiction over every one of those patents.

THE COURT: So you're telling me that, today, next week you will receive from the defendants initial infringement claims as to all the patents that you've raised, including those you've raised in your counterclaim?

MR. SHORE: (Turning to co-counsel.) Well, what's the stipulation actually say?

MR. CHAN: Your Honor, with regard to the Northern District of California rules, we will receive the infringement contentions that pertain to the four Fujitsu patents that are being asserted in this case and in Northern District of California affirmatively by Fujitsu.

Now, with regard to the remainder of the Fujitsu patents that Nanya is seeking a declaratory judgment of non-infringement, et cetera, patent local rules set out a specific procedure upon which the patentee provides those infringement contentions. And I don't have that date at my fingertips, but it is --

THE COURT: It's not next week then?

MR. CHAN: It's not next week, but it is in the --

THE COURT: It's forthcoming.

MR. CHAN: It is forthcoming.

THE COURT: Within 40 days, 45 days?

MR. CHAN: I'd have to go look at the rules. But there is a specific date. I know it's less than 60 days. But it's set out in Patent Local Rule 4, I believe.

MR. SHORE: I guess the point that we want to emphasize, Judge, is all 18 of those patents are at issue. I mean, if they weren't at issue, then the other side would be filing a motion to dismiss for lack of subject matter jurisdiction. In this case, all 18 of those patents are going to be litigated. You know, whether or not they've made affirmative assertions of them that they want to sue us and seek damages, you know, that's one thing, but they have raised a claim or

controversy regarding those patents, and those patents are at issue.

But let me, getting back to the difference it's going to make if we follow the local rules and they provide infringement contentions, I mean, you know, counsel said just a minute ago that, you know, it may narrow it down in each patent where there's only 20 claims that are going to be at issue. They'll give us their initial claims construction, we'll sit down, we'll meet and confer about it, and then after we meet and confer, we may agree on some, you know, 20 may pop out as being real contentious. That was his example, 20. Well, that's 20 for each patent, you know. So you can see already that even if we follow the local rules as far as exchanging, you know, claims construction contentions, we're still going to run into controversies left over after that.

THE COURT: But that process, though, would allow me the opportunity to look at the merits of both sides and make a decision.

MR. SHORE: In that sense, Judge, we'd be doing piecemeal just every time we would end up being here time after time after time, you know, we would end up having to meet and confer, meet and confer, because we don't know what the interrogatories are going to be.

But I promise you, there definitely will be at least 25 to 50 questions we could ask on each patent; each one of those patents is an individual case.

THE COURT: Is the time frame the problem that you foresee, the time frame? Let's assume we ask you to file these interrogatories tomorrow, all right, what -- does that present a problem?

MR. SHORE: Excuse me, Judge?

THE COURT: Let's assume I ask you to, in compliance with the rules, to file these requested interrogatories tomorrow.

MR. SHORE: That -- and that's the reason why we didn't follow Local Rule 33.1, which is all matters within your discretion. We don't know what those interrogatories are going to be yet, we have to look at the document --

THE COURT: That's why I asked you whether you've drafted these interrogatories or not.

MR. SHORE: We can't draft them now, Judge, because we don't know what they're going to be. What I'm saying is it's very reasonable for us just to ask 25 for each of the patents, because standing alone, each one of the patents is its own case. We're going to look at the documents and then, like opposing counsel said, he may say, well, ownership, I could just

tell them, well, look at such and such documents and you'll see what our ownership contentions are. That's the answer to one of our interrogatories. He says he'll just call us up and tell us. Well, we'd rather have it in an interrogatory. That's the kind of thing we're talking about. You look at the documents first, the documents determine what your interrogatories are going to be. The interrogatories narrow the claims. You go to depositions, you take the depositions, and you could take targeted, productive depositions, and then you can narrow the issues even further with requests for admission. But to say that we would need at least 25 interrogatories for each patent, 25 interrogatories, you know, possibly for the antitrust case, that is perfectly reasonable requests considering the complexity of any patent case.

MR. RAZZANO: Judge, if I could just make one small point. I think we're getting a little bit lost in the minutiae here. I mean, the bottom line is, first of all, the California case is completely different than the Guam case. Okay. So regardless of what they're going to produce in California --

THE COURT: But wouldn't they be the same, though, the same issues will be raised?

MR. RAZZANO: I see what you're saying, but

let me come back to that. In California, what we're going to get is we're going to get some documents and some claim construction regarding the patents that they've asserted against us. And you've correctly pointed out, Judge, that doesn't cover all 18 of the patents. So you're absolutely right when you said to Mr. Murray we're only going to get claim construction on certain of the issues, certain of the claims outlined in our complaint. So, as to the ones that are not at issue, we should at least get to serve interrogatories on the claims not at issue.

THE COURT: Well, see, that's where the process -- that's why I'm asking these questions because --

MR. RAZZANO: And I completely agree. And outlined in our stipulation in paragraph 5, we are allowed to serve the merits based discovery, we're allowed to serve the merits based discovery at any time. They're not due until 30 days after the hearing. However, Judge, if we wait, what Mr. Murray wants us to do is, he wants to wait until there's a ruling on the motion to dismiss and then start giving us the information. That's not what the stipulation says. So we're entitled, entitled to get the information at least on the claims that are not at issue.

So that's the only point I wanted to make. And I think we're getting lost a little bit in this California case, this Guam case, and so I think we just need to refocus on exactly what we're actually going to get next week.

THE COURT: Okay.

MR. RAZZANO: Thank you, Your Honor.

MR. SHORE: Anyway, Judge, I guess the point I would really like to make is, yes, interrogatories will change once we start getting documents and reviewing the documents. That's why we couldn't comply with Rule 33.1, because we don't know exactly what those interrogatories are going to be. If we filed cookie-cutter interrogatories in every case, we wouldn't be very good lawyers. Good lawyers file targeted discovery based on what they already know and what they learn through their informal review of other discovery materials and through other discovery.

But my point I just want to emphasize is 18 different patents, they're at issue, 18 different patents; it's 18 different controversies, 18 different cases. And I guarantee you we'll need 25 interrogatories, at least 25 interrogatories for each one of those 18, regardless of whether we follow the Northern District rules, you know, and use that to kind

of narrow the issues further. I mean, every means to narrow the issues in this case we need to take advantage of, because as you can see from what I presented to you earlier, the issues are huge. I mean, there are dozens of issues with each patent, there could be dozens of issues with each claim in each patent, there are dozens of issues to ferret out in the antitrust case. I mean, the number of issues is immense. And so the 25 interrogatories per patent is perfectly reasonable.

I'm not trying to do all our claims construction on claims, you know, invalidity and infringement contentions through interrogatories, I'm not trying to do that. If I was trying to do that, I'd be asking you for 10,000 interrogatories. So, you know, Judge, I think what we're asking for when you look at the big picture here is extremely reasonable and necessary, necessary to get to the issues in this case. Thank you.

THE COURT: But let's assume I give you the relief that you're asking, when do you anticipate filing your interrogatories or your requests?

MR. SHORE: 30 days after the ruling on the motion to dismiss they're supposed to deliver to us, they're supposed to start producing documents related

to the --

MR. CHAN: Your Honor, it would be soon after, seasonably after we receive the documents set out in the stipulation.

MR. SHORE: Which is 30 days after the ruling on the motion to dismiss.

MR. CHAN: In terms of the merits discovery documents, that's when that would be due.

MR. SHORE: Right.

MR. CHAN: But there are disclosures that would be due beforehand --

THE COURT: But my question was --

MR. CHAN: -- responsive to our requests for production. Those would be -- those are due by April 2nd, and then by April 16 for Fujitsu Limited. And seasonably after the April 2nd and that April 16th dates, we would be in a better position --

MR. SHORE: That's the jurisdictional discovery. Then there's the merits discovery later on. I mean, each one of those are different. Once we get the documents on the jurisdictional discovery in April, we'll have interrogatories based upon what we receive in those documents. Once we get the documents on the merits discovery 30 days after the hearing on the motion to dismiss, then we'll have the interrogatories,

start issuing interrogatories on the merits discovery on each one of those patents. That's the way, you know, efficient discovery is done. You look at the documents that you get, you look at what you have, and then you tailor your interrogatory response to the documents you get. So it wouldn't be tomorrow that we would file these interrogatories, because like I said, we don't know what these interrogatories are going to say until we get a chance to look at these documents.

THE COURT: All right. So the earliest would be sometime in April then?

MR. SHORE: April for the jurisdictional discovery interrogatories, and then it would be, once we had a chance do review the documents that we receive 30 days after the hearing, it will probably be -- the documents will probably be in the summer, June, July on the merits discovery, after we get a chance to receive and review the documents.

And we haven't even touched on the motion to compel, Judge. I mean, if you look at the objections that they have in their -- the objections that they filed to the original request for production, you know, we're going to meet and confer on that and try to work that over, work that out, that motion isn't really ripe at this time, I don't think, since they've agreed to

produce documents. But there's a lot of objections that were made that shouldn't have been made.

THE COURT: So basically -- let me see if I understand this. The motion today is in a sense authorization to file interrogatories in excess of 25 in the future?

MR. SHORE: For each one.

THE COURT: On or about -- on or after April as to each patent claim before the court, and the antitrust claims.

MR. SHORE: It would be 25 interrogatories for each patent. That's what we're asking for initially is 25 interrogatories for each patent.

THE COURT: Well, and also the -- also the motion also dealt with the antitrust claims.

MR. SHORE: And 25 interrogatories for the antitrust claims, yes, Your Honor. So, yes, Your Honor, that's correct. Initial interrogatories I think is 475, initial interrogatories, which would be 19 times 25. That's one set of 25 for each patent, and one set for the antitrust, so I think that's 475. And it's 18 -- it's 19 different cases, Judge, it's 19 different controversies; you know, they just happen to be joined in one lawsuit.

THE COURT: All right, anything else? I'm

sorry.

MR. SHORE: No, Your Honor.

THE COURT: All right, Mr. Benjamin, I think you had your hand up.

MR. BENJAMIN: Yes. Your Honor, just to clarify how scheduling works here, under the stipulation that was filed by the parties on February 20th. There is -- the only discovery that they've served regarding jurisdiction has all been document requests. Those responses are due by April, based on their own request, their opposition is then due on May 15. So the intent in my discussions with Mr. Razzano, as I understood it, was that they were going to get through their jurisdictional document requests. There didn't appear to be any other discovery going on.

The only issue that we understood to exist regarding interrogatories is regarding the merits. If they want to use their 25 existing interrogatories in jurisdiction or some portion of it, that's fine. But the timing is such, Your Honor, they'll be getting documents by April 16, 2007 on the jurisdiction issue, their opposition is due on May 15, so it doesn't make sense that they'd really be serving jurisdictional interrogatories on, you know, April 16 because they would get responses the same day their opposition was

due. There wasn't that kind of --

THE COURT: So you're saying whatever interrogatories they file may be subsequent, may be much more time after that.

MR. BENJAMIN: Exactly, Your Honor, because what paragraph 5 of the stipulation states is that all of the responses on merits discovery will be 30 days after the hearing on defendants' pending motions to dismiss or transfer. So if we -- if, assuming that the court has not granted the motion to dismiss, assuming we're responding to the pending requests that they've served for documents on the merits, that would be 30 days after the, I believe it's June 22nd hearing, so about July 22nd we would produce documents, they would then look at those documents, and then really have the chance to formulate whether or not they think this extreme number of interrogatories is even necessary. And I think, Your Honor, frankly, any motion at that point would be a lot more ripe, because then they could actually be providing us and the court with specifically what interrogatories are actually necessary in this case.

The related point on that, Your Honor, being that we still haven't seen any authority from them, even though we've talked about, well, this is a very

complex patent case, or there are lots out there, yet they're not citing a single case for the fact that this many interrogatories has been permitted by any court. I'm sure, Your Honor, there are dozens of cases each year with 18 patents in them, but yet not one of them is being cited as authority for the idea that this is a reasonable way to proceed in this case. And I would think that there'd be at least one example of that occurring, if that was a normal procedure in a patent case.

We do think, Your Honor, that the Northern District procedures would be a lot more efficient; they seem agreeable to using the Northern District procedures, and so perhaps that might be the better motion to make, is to adopt I believe it's Rule 4 of the Northern District. Thank you, Your Honor.

THE COURT: Final word?

MR. RAZZANO: Judge, just one point. I mean, that's exactly right, what Mr. Benjamin said. So if I serve 25 interrogatories tomorrow and you don't rule that I can have any additional interrogatories, the next thing they're going to say is, hey, you've used up your 25 interrogatories on jurisdiction, so you don't get any more interrogatories for the entire case. That's exactly why this motion is ripe, it's exactly

why we need to get a ruling from the court saying there's going to be additional interrogatories in the case. So I'll be standing here on May 14 on a motion for continuance, telling you how I'm supposed to answer these questions, I have to reserve my 25 interrogatories for the other 19 claims. Thank you.

MR. MURRAY: Your Honor, just to respond to that point specifically. We certainly wouldn't take the position that we wouldn't consider additional interrogatories. All we're asking them to do is to follow the local rules, to set forth the interrogatories, additional interrogatories that they would like to serve after their 25, and if they're reasonable, then we would agree to them. If they're not reasonable, then we would try to negotiate perhaps some middle ground with them. And if the parties ultimately can't come to some agreement, then reluctantly we would have to come to court to ask Your Honor to look at these interrogatories.

But what they're asking you to do -- and Mr. Shore said several times, I don't know what these interrogatories are going to look like -- what they're asking you to do is to approve in advance the interrogatories that they will write several months from now, without having seen them, without knowing

whether they would be reasonable interrogatories or unreasonable interrogatories. And that's exactly what the local rule is designed to prevent.

The interrogatories that they want to serve should be set forth, the parties should discuss them, and if a motion is necessary at that time, Your Honor should have the benefit of being able to see the interrogatory and make an informed decision about whether or not it's reasonable, not, just as we said, giving them a blank check to serve the interrogatories, whether they're reasonable or unreasonable.

THE COURT: All right. So the objection is not so much in numbers, but perhaps the reasonableness of the purported request.

MR. MURRAY: Well, certainly 900 seems unreasonable just automatically, I mean --

THE COURT: Well, you see, that's a position that I don't think I share.

MR. MURRAY: Well, it may or may not be. I mean, I only do patent infringement cases, I've worked on many, many complex cases like this; I've never seen anything approaching that number of interrogatories. But maybe it's reasonable in this case. But my point is only that to approve them in advance without seeing them seems to me to be directly contrary to the local

rules.

THE COURT: But I think we misconstrue the whole process of discovery, because assuming the court authorizes them to file in excess of 25, you still have -- are able to come back to court and object to them based on its unreasonableness. See, that's why I asked you, is the objection based on numbers or the reasonableness of the request. So if I give them 50 and you come back and say, hey, 30 of these are unreasonable, then we make a determination based on the meritorious contention of those requests being unreasonable, and to the extent that they're unreasonable, of course, the court will not authorize discovery.

MR. MURRAY: I think the local rule puts the burden on them to justify additional interrogatories, not on us to sort of -- you know, it shouldn't be an automatic thing.

THE COURT: Well, you know, I've seen a lot of civil cases where in just one cause of action, we've granted requests over 25. So, you know, it appears reasonable to me at this point that going beyond 25 in this particular type of case doesn't appear to be unreasonable, going over 25.

MR. MURRAY: I don't disagree with that at

all, Your Honor. I'm merely suggesting that to approve 900 interrogatories in advance --

THE COURT: Well, see, but I'm not approving in the sense -- in that sense, I'm just saying, well, you know, for discovery purposes maybe going over 25 might be reasonable, because you still have the opportunity to come back on the merits of each request and say they are unreasonable, not in numbers, but because of the nature of the request. And so you're protected in that regard, in the manner the rules say you should be protected.

MR. MURRAY: Right, but I think again, that --

THE COURT: I think here at this point we're scared because of numbers, and that really shouldn't be a reason for not allowing the request, because we're scared of the numbers, as opposed to the reasonableness of the request. I mean, it could be all 900 would be reasonable, all 900 could be unreasonable also at the same time.

MR. MURRAY: Okay. But I think the better procedure would be for them to come to us with their proposed interrogatories and for us to discuss them, and then if we have a problem, come to the court, not that they get sort of advanced approval for so many interrogatories.

THE COURT: Well, I could always say to them that ten days before you file, or five days, furnish you a copy so you can have an advance copy of what it is that they intend to file. Would that be unreasonable?

MR. MURRAY: Well, that, specifically that wouldn't be unreasonable. Again depending on --

THE COURT: I'm just trying to get some reasonableness in terms of the resolution of the motion before the court this morning really.

Mr. Benjamin?

MR. BENJAMIN: If you imagine 900 interrogatories and the fact that what that's going to require answering, that's going to require, I mean, we already have five attorneys --

THE COURT: But you're all extremely intelligent.

MR. BENJAMIN: Nonetheless 900 interrogatories -- and by the way, there's also a request for admissions too -- that each of those is going to have to be broken down by attorney, objections set out, and so on; I mean, that's what happens once interrogatories are served on you, if the court has already given this a blank check. So our client would already be incurring quite substantial cost simply responding to

all the objections and going to court for relief if there's a blank check here, where it might then turn out that the court determines that half of those, 450 of them were really excessive, and our client would still be out extremely substantial cost when you look at 450 highly technical interrogatories that we'd be coming up with objections and answers, and applying to the court for relief.

Again, if we start with the procedure that's supposed to exist under the local rule, which is that they would file -- submit these to the court first, that would provide the opportunity to keep the burden both on the court and the parties to the minimum, which is to have them draft the interrogatories that they specifically believe they need after they've looked at the evidence, they submit them in to the court, we have an opportunity at that point to explain why some or, you know, whatever number of them we believe are unreasonable; at that point, if the court determines that, you know, whatever number specifically, if it determines that 200 of them are reasonable requests, then we go back and we actually draft the actual answers, go through the specific objections on any subject questions. But we don't have this burden of simply responding to this blank check of

interrogatories, which is going to take a lot more than just five attorneys working on them when you've got 900 interrogatories and that many requests for admissions potentially too.

And so, Your Honor, that's why we would again urge the court to go back to the local rule and really to take this request at the proper time which is not premature, when we actually know what interrogatories we're discussing and what interrogatories there's actually disagreement about.

THE COURT: Well, you know, when my wife goes shopping she also has a blanket check, so there's a precedence for blanket checks.

All right, so thank you very much. I'm certainly, of course, impressed with the arguments this morning. It's always a difficult decision to make after hearing extremely fine arguments on both sides. I can see plaintiffs' point of view and I can really see the defendants point of view, really, I see both of them, so it makes deciding harder.

And I believe that in light of the complexity of the case before the court, that there must be a need to grant discovery beyond the normal discovery provided by Rule 33.1. I'm disappointed with the plaintiffs in that they did not file the interrogatories as the rule

requires, but I think I know the reason why; they don't know what to ask at this point. So that explains why these interrogatories are not before the court.

Of course I'm a stickler for purposes of complying with the rules; rules must be complied with in order to get your request. But, nevertheless, I believe that the plaintiffs in this matter should receive some relief in the sense that they should not be limited to a total of 25 interrogatories for the nature of their claims before the court. And as the court has reviewed the complaint, I see a complaint with 50 causes of action, 18 in relation to patents, 15 of them belonging to -- 15 U.S. patents belonging to the defendant, three to the plaintiffs, in addition do that, two causes of action for antitrust violations are made, violation of Sherman Antitrust Act and the Clayton Act. So it just doesn't seem reasonable to me, to the court that 25 requests can encompass all that could be sought in terms of the causes of action before it.

So my problem really is to determine what to allow at this point. 25 at this point might be too much maybe as to each claim, in light of the fact that we don't see it in front of us. I'm thinking that perhaps cutting it in half or giving you 15 might be a

stroke of just a draw perhaps on my part, and a number that might seem to satisfy the other side in terms of the numbers. And then at the same time, if I do grant this relief, I hope that the plaintiffs take into consideration perhaps doing their best to limit the number based on discovery that they will be receiving in the future.

So what I'd like to do today is grant that relief in part that the plaintiff is asking, and grant them 20 interrogatories for each of the defendant's patents that are at issue. And the same number for each of the plaintiff's patents that they've also raised herein initially. And I use these numbers generally because the requests would be fashioned appropriately once plaintiff receives documents through these initial infringement claims exchange, and also documents they'll be receiving in April, or may be receiving at the present time.

I'm initially setting this number not so much as a limitation on the case itself, but a limitation on the numbers that can be initially served. Of course, discovery to the extent that it is required by any party, the court can certainly look at it at another -- or at a time in the future.

And also, what I would like plaintiffs to do

is, to the extent that they have drafted these interrogatories, 20 in number, that they serve a copy of these to the defendant. And they're going to preserve to the defendant all their rights, or course, to object to these interrogatories in the future, and the court doesn't believe that their rights to do so are jeopardized at this point.

So that would be the order of the court. The court will allow the plaintiffs initially to file 20 interrogatories as to each claim, and as to the antitrust issue before the court. That's 20 times 18, that's 360, and another 20 as to the two counts, 20 each, so 400. I think that's mathematically correct.

And with the proviso of furnishing the defendants an advance copy, let me ask you how many days can you do that before you file it with the court.

(Pause while plaintiffs' counsel conferred.)

MR. RAZZANO: Judge, I think we'll give them 60 days in advance before they have to do anything, with the exception, of course, if we serve some jurisdictional interrogatories, we'll just serve them in due course and expect them to answer in due course.

THE COURT: Is that fine with the defendants, 60 days? They'll give you a copy 60 days in advance to look at it.

MR. MURRAY: That's certainly better than 30 days, Your Honor.

Can I also raise a point with Your Honor? Since we seem to be proceeding, doing a lot of this sorting out of issues through interrogatories, the defendants would ask for similar treatment.

THE COURT: Yes, certainly. You know, whatever they're getting, that's what you'll be getting.

MR. MURRAY: Thank you, Your Honor.

THE COURT: It has to be equal to the parties. I said that early in the beginning, whatever they get, you get likewise.

Any other clarification in terms of the court's order?

Well, thank you very much, counsel, for the fine arguments.

Let's proceed further now with the scheduling order, we still have to do that before, hopefully before noon. There's not that much there to talk about other than just some dates that need to be changed, so let me go to the proposed scheduling order as I have it in front of me.

The first date that appears that needs to be changed is on paragraph 5, and that's on Page 3 -- I'm

sorry, paragraph 4, motion to amend. Let's change that to the 4th because the 3rd actually is Labor Day, a federal holiday. All right. So that will be September 4 instead of September 3rd. Do you see that?

MR. UNPINGCO: Yes, Your Honor.

MR. MURRAY: Yes, Your Honor.

THE COURT: All right. And of course the scheduling conference is today, March 2nd. And let's go to paragraph 10 and insert a time there. So the preliminary pretrial conference would be December 1, 2008 at 10:00 o'clock in the morning, again just to insert a time. Same thing with paragraph 13, final pretrial conference will be December 22, 2008 at 10:00 o'clock in the morning. And that would take us to the jury trial that's to take place in paragraph 14, that should be at 9:00 o'clock in the morning on the 14th -- or rather than the 12th, I'm sorry, January 12th, 2009 at 9:00 o'clock in the morning.

Now, the other issue concerns the discovery plan. The plaintiffs would like that initial disclosures be no later than 30 days after the entry of the scheduling order, and the defendants would like it 30 days after a ruling on the pending motion to dismiss or transfer. My question here is, have initial disclosures been made in the Northern District?

MR. MURRAY: They have, Your Honor.

THE COURT: Does that present a problem in this case with providing initial disclosures, inasmuch as it appears they have been provided in the other venue?

MR. MURRAY: Well, at the time the initial disclosures were prepared, the issues weren't exactly the same in both cases, so I don't know that that takes care of disclosures that would be required for this case.

MR. CHAN: Your Honor, for Nanya, our initial disclosures will be the same in both cases, will cover all of the patents at issue, both in the Guam court and the Northern District of California.

THE COURT: All right. The defendants would like theirs to be made no later than 30 days after the ruling of the motions. So you object to that?

MR. CHAN: Well, Your Honor, we're already serving our disclosures, we already have actually served our disclosures.

THE COURT: And I'm sure you've also received some on their part that relates to those issues that are the same in both courts; is that correct or am I --

MR. RAZZANO: At this time, we've served our initial disclosures in this case already.

THE COURT: To the other side?

MR. RAZZANO: We have received nothing from the other side.

THE COURT: But you've received something, though, that relates to the claims herein from the California case, right?

MR. MURRAY: Yes, they have.

MR. CHAN: I believe so.

THE COURT: At least to those claims, those seven claims --

MR. CHAN: Yes, I believe so.

THE COURT: -- I would think; you've gotten initial disclosures there?

MR. CHAN: I'd have to verify, but I believe so, Your Honor. Yes.

THE COURT: So as to the remaining claims, they're still asking that be done after the ruling on the motion to dismiss; is there strong objection there?

MR. CHAN: Well, Your Honor, I think it would just be more efficient to have those disclosures done right now, because they're going to have to make those disclosures anyway in the Northern District of California --

MR. MURRAY: Well, Your Honor, here we have not answered yet, we have not filed counterclaims yet,

so it's difficult to determine the proper scope of the initial disclosures for this case until the answer and the counterclaims are filed. So, I think they're essentially getting the same information anyway, in the context of the Northern District of California case, so I don't think they can really complain that they don't have the information.

But just procedurally in this case, it's difficult to make the formal disclosures because we don't know exactly what the counterclaims are going to be yet, or whether the parties are going to be in this case yet.

MR. RAZZANO: Judge, they can amend their disclosures at any time. I mean, the reason we have Rule 26(a)(i) disclosures is to get some of these discovery disputes out of the way. So, and if they admittedly are going to give us the information in California anyway, so what's the problem with giving us the information in this case.

Generally, the way we handle these in our court is within 30 days after the time the scheduling order is issued, and we would like for that same procedure to be in place in this case. There's no reason for any other procedure to be adopted. So we would strenuously -- if you're asking if we're

strenuously objecting to them not serving their initial disclosures and denying us the opportunity to see those documents, the answer is, yes, Judge.

MR. MURRAY: Well, again, they're getting the document.

THE COURT: They're getting the documents in the California context as it relates to the same claims in both cases. Do you have any strenuous objection if I ask you to do that in 60 days as to the other claims, 60 days from today?

MR. MURRAY: No. Again, I'm not sure how that works with the counterclaims, with respect to -- because I don't know whether we're going to have counterclaims or what they'll be exactly yet.

THE COURT: But counsel has said you can always amend these initial disclosures to take into consideration what has occurred at a later point in time.

MR. MURRAY: Okay. So anything relating to counterclaims that we might file then we would file after the counterclaims?

THE COURT: To the extent that they occurred at a later date from when you filed your initial disclosures, certainly you can amend.

MR. MURRAY: Okay.

THE COURT: Let me give you 60 days from today to file your initial disclosures.

MR. MURRAY: Thank you.

THE COURT: The only other matter is regarding experts. I don't see anything that provides when experts need to be disclosed. Do you want to keep it as it is, or -- do you want to keep it the way it is at the present time?

MR. UNPINGCO: Please, Your Honor.

And there is another matter that we would like to bring up, Your Honor, once this is done.

THE COURT: All right. Any objection to keeping it the way it is, the expert testimony?

MR. MURRAY: No objection, Your Honor.

THE COURT: We'll keep it that way then. So let me go ahead and sign the --

MR. UNPINGCO: Your Honor, if I may.

THE COURT: I'm sorry.

MR. UNPINGCO: There is one other thing I would like to bring up, and that is paragraphs 18 and 19 of the scheduling order. We have indicated in paragraph 18 that the parties have been ordered to participate in mediation in connection with the related California case. Unfortunately, what happens in that case is that the mediation can settle the California

case, but we might still have the Guam case pending. And so we think in the interest of judicial economy, if that mediation in California can be applicable to both the California case and this case. In that way the parties will be greatly motivated towards a global settlement of the cases of the United States cases.

THE COURT: Any objection to that? Perhaps the mediation process, assuming the parties agree, will also maybe take care of the matter here.

MR. MURRAY: Certainly the mediation process, hopefully, will discuss global settlement issues. I'm not sure exactly what plaintiffs are proposing in terms of --

MR. UNPINGCO: What we're proposing, Your Honor, if I may?

THE COURT: Mr. Unpingco.

MR. UNPINGCO: What we're proposing is that the mediation -- the court has already, in California, has already ordered that a mediation occur. A mediator has already been appointed, I think it was former Judge Enfante, has been appointed. And we would just like -- if necessary we'll file a motion to ask the court that the court -- that that mediation is also applicable to this case as well as the California case. So that if they reach a global settlement in that mediation,

assuming the best, then both cases are settled, instead of trying to do it piecemeal, or there might be a lingering issue --

THE COURT: But wouldn't a settlement there, though, in effect affect the case here?

MR. UNPINGCO: It will affect it to a great extent. However, what we're concerned about is that there may be some other issues in this case that are still lingering, so we might as well have that mediation applicable for both cases.

THE COURT: Well, is there a question of jurisdiction or no?

MR. UNPINGCO: Well, I don't think there's a question on jurisdiction. I think if we can ask the court --

THE COURT: Have an order that appoints the same, is that what you're seeking, an order that appoints the same --

MR. UNPINGCO: Yes, Your Honor, if we need to make --

THE COURT: -- mediator?

MR. UNPINGCO: Yes, sir. Yes, Your Honor, if we need to make a motion to the court, if that same mediation will be applicable to this case as well.

THE COURT: And compensation is agreed to by

the parties?

MR. UNPINGCO: The same parties are going to be bearing the same burden of compensation.

THE COURT: Well, is the mediator going to agree to such an order coming from here?

MR. UNPINGCO: Well, I think that if the court, if we make a motion to the court and the court grants it, then the mediator -- I don't see any reason why he won't be amenable to that mediation counting for both cases.

THE COURT: All right, let me hear from counsel.

MR. MURRAY: We have no objection to that mediation counting in terms of any requirements for mediation in Guam; but I'm not really sure why it's necessary for Your Honor to order that mediator in California to take into account the Guam case. I think with the answer that they've filed, the issues are the same, all the patents are the same in both cases, I don't see how it's possible to settle the California case and not settle the Guam case.

MR. UNPINGCO: Your Honor, if I may. The problem here that I'm having is that my counsel, opposing counsel has said he doesn't know yet what their counterclaims are going to be. He hasn't filed

an answer in this case, and so my problem is that I don't know what his counterclaims are going to be. So if we make this mediation applicable to both cases, it will dispose of the case entirely in both areas. I can foresee a situation where, for instance, he may come in and file his counterclaims, because he may have had buyer's regrets or seller's regrets about what the mediation result was and file a counterclaim here, and then we're back in litigation again. So I'd just like to have one dispositive, if at all possible, one dispositive mediation. Both parties are already going to bear the cost, why not just make the mediation applicable to both cases?

THE COURT: Is this mandatory mediation in California?

MR. UNPINGCO: Yes, Your Honor.

THE COURT: It's mandatory?

MR. UNPINGCO: Yes, it's court ordered.

MR. MURRAY: Your Honor, I'm having trouble understanding the logic here. It's not an arbitration where we'd be bound by anything, it's just an mediation. So if we don't agree to settle the Guam case as part of that mediation, then we don't agree to settle it. And the fact that this court has ordered that mediator to take into account the Guam case, I

don't see how it has any impact on that. So, you know, what the parties make out of the mediation, and I hope that we both make the most out of it, is up to the parties. And really, it's not like there's going to be a judgment or something that would apply to Guam. So, I'm having trouble following the argument.

MR. UNPINGCO: The logic is clear, Your Honor, in the sense that we don't want -- we want just one mediation to occur. And usually in a mediation both sides do have to agree, but sometimes there's seller's remorse or buyer's remorse after the agreements are reached. And in this case there's still an opening for that remorse to be realized, in this case by the opposing side, because they can still file a counterclaim in this case.

MR. MURRAY: Well --

THE COURT: Wouldn't it be possible, though, for let's say the plaintiff to agree to dismiss the California case but not agree to dismiss the Guam case?

MR. UNPINGCO: It is possible. And what we'd like do is rather than piecemeal have another mediation for the Guam case, let's just do it all at one time.

THE COURT: But the issues, though, that might lead to a settlement in the Northern District might not be the same issues that might lead to a settlement

here.

MR. UNPINGCO: There is a possibility, but if we're looking at a global settlement, what we're after, what's at stake here is how the licensing, how the market is going to be approached, and decided. And so, the global settlement is what we're trying to encourage here as opposed to --

THE COURT: But still, it leaves it to the parties, though, to agree to settlement, so it just seems logical that if the parties want to settle globally in the Northern District, that would apply here.

MR. UNPINGCO: Not necessarily, Your Honor, because as I said before, we do not know if after having carefully considered the results of the mediation or the negotiations or the agreement that they reached, they do not then find that they might have traded away something far more valuable than they had anticipated, and then they'll try to find a way to recoup whatever they have lost through a counterclaim here in this court in this case.

MR. MURRAY: Your Honor --

THE COURT: But wouldn't those considerations something that you would take into account also in settling the case in the Northern District, those

possibilities here?

MR. UNPINGCO: Yes, Your Honor. But normally -- well, the problem that we have here is that the California mediator is going to be focused on settling the California case. Okay. And what we're afraid of is that there may well be other issues that may be resurrected after that case is settled for here. And why can't we just get everything concluded at one point in time.

MR. MURRAY: Your Honor, I think the appropriate way to deal with this is through the settlement process and the mediation. If the parties come to some agreement, then there would be settlement documents drawn up, those documents would of course address all the cases that would be settled and there would be an agreement to dismiss this case, you know, et cetera, and that would just be dealt with in the normal course of that mediation. I don't see how it's logical that we could go through that mediation process, have a global settlement, and then come back here and file some, some new counterclaim; that would be taken into account in the settlement papers that would come out of the mediation. So, again, I don't think it's necessary for this court to order the California mediator to do anything. I think these

issues can be dealt with by the parties in the context of the mediation. Again, we have no problem with that mediation sort of counting towards the mediation requirements for Guam, but I don't know that it's necessary or appropriate for this court to order the mediator to take any specific action.

MR. UNPINGCO: Two points, Your Honor. First, we would like to give the mediator as broad -- a broad applicability of his mediation as possible to address both cases. The second thing is that if they have no -- if their intention that they're saying now before Your Honor is they have no intention of coming here once they have settled in California, then it should not be a problem for the court, for Your Honor, this honorable court to say, well, that mediation will have applicability to both cases. And I don't see why they're objecting so strenuously to this proposal. I think it is a very efficient and logical proposal, because it disposes -- the global settlement then truly becomes global, there are no reservations to be made in the settlement agreement, or words that can be misinterpreted as not settling an aspect of the case globally.

THE COURT: All right. Let me deny that oral motion at the moment without prejudice to the

plaintiffs of renewing that motion, maybe after ascertaining from the mediator whether this is an item which that mediator wants to undertake. Assuming the mediator wants to take an additional responsibility, then I think a more appropriate written motion might be then desired for the court to take any action in light of plaintiff's objection -- or defendant's objections this morning.

MR. UNPINGCO: So, Your Honor, if I'm clear, you're giving us permission then to approach the mediator about the possibility of his being a mediator for both --

THE COURT: Well, I don't have to tell you that, I think you have the right to approach the mediator and ask him whether he thinks having the Guam matter be part of the mediation that he's undertaking in the Northern District be part of his duties that he might want to undertake.

MR. UNPINGCO: And if he doesn't want to undertake that responsibility or if he says, I need something from the court of Guam to undertake that, to give me that kind of authority, I would like to ask --

THE COURT: Well, maybe he should also contact the defendants and get the defendants --

MR. UNPINGCO: The way I'm going to approach